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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,530	01/16/2001	Mireille Maubru	05725.0828-00	2122

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EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 04/09/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,530

Applicant(s)

MAUBRU ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-18, 20-34 and 37-44 is/are pending in the application.
- 4a) Of the above claim(s) 13, 15, 23-29 and 37-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 14, 16-18, 20-22, 30-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

The Request for a Continued Examination (RCE) under 37 CFR 1.114 filed on January 9, 2003 based on parent Application No. 09/759530 is acceptable and a RCE has been established. An action on the RCE follows.

Applicants' election in the parent application (paper No. 7) is presumed to carry over to the instant RCE since applicants have not indicated a contrary intention. The claims have been examined insofar as they read on the elected invention and species.

Receipt of applicants' amendments and remarks submitted January 9, 2003 is acknowledged.

Claim Rejections 35 U.S.C 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12, 14, 16-18, 20-22 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweger et al. (US 5,482,704, of record) and Babenko (US 6,277,893) in view of Saint-Leger (US 5,919,438, of record), and Murray (US 5,720,964, of record).

3. Sweger et al. teach the usefulness of the amphoteric starch herein employed in cosmetic composition. The starch derivatives may be used as thickener or emulsion stabilizer, they provide cosmetic composition with excellent aesthetic properties of skin feel and appearance. See, particularly, col. 1, line 20 to col. 2, line 33. The starch derivatives may be employed in

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various cosmetic compositions, including skin care creams and lotion, the cosmetic composition may comprise various conventional cosmetic ingredients. The amounts of the starch derivatives employed are depending on the type of cosmetic compositions, but generally in the range of 0.1% to 20%. See, particularly, col. 4, line 39 to col. 6, line 40. The starch derivatives are superior to Carbopol (a conventional thickener and emulsion stabilizer) in respect of thickening and emulsion stabilizing properties. See, particularly, columns 8-9. Babenko teaches particularly a stable oil-in-water emulsion for use in cosmetic composition comprising the starch derivatives herein as emulsifier. The emulsion is particularly useful in compositions such as creams, lotions, antiperspirants, make-up products, sunscreens, shampoos and body cleansing products. See, particularly, the abstract, column 5, lines 20-40. Dimethicone, a polydimethylsiloxane is particularly useful in making the emulsion. See, particularly, col. 6, 10-32.

4. The primary references do not teach expressly a composition comprising each and every cosmetic ingredient herein listed, alkyl ether sulfate, the particular cationic polymer, polydimethylsiloxane, and coconut monoisopropanolamide.

5. However, Murray teaches a shampoo composition comprising alkyl ether sulfates, e.g., sodium lauryl ether sulfate, silicone emulsion, cationic polymers, such as polymer JR 400, and a thickener. See, particularly, the abstract, col. 3, line 36 to col. 6, line 45. Saint-Leger teaches that coconut monoisopropanolamide is particularly useful in shampoo composition, particularly with alkyl ether sulfate. See, particularly, the example 1, in col. 4.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ the starch derivatives herein as emulsion stabilizer or thickener (as taught by Sweger et al. and Babenko) to make a cosmetic

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emulsion composition, and incorporate the conventional cosmetic ingredients herein disclosed to formulate a particular cosmetic composition, such as shampoo.

A person of ordinary skill in the art would have been motivated to employ the starch derivatives herein as emulsion stabilizer or thickener (as taught by Sweger et al. and Babenko) to make a cosmetic emulsion composition, and incorporate the conventional cosmetic ingredients herein disclosed to formulate a particular cosmetic composition, such as shampoo because the starch derivatives have excellent aesthetic properties of skin feel and appearance, and are superior to conventional thickener or emulsion stabilizer. The employment of the particular ingredients herein, i.e., alkyl ether sulfate, the particular cationic polymer, polydimethylsiloxane, and coconut monoisopropanolamide, in a cosmetic composition, e.g., shampoo, is obvious to one of ordinary skill in the art because all these ingredients are old and well-known cosmetic ingredients, particularly in shampoo composition.

Response to the Arguments

Applicants' amendments and remarks submitted January 9, 2003 have been fully considered, they are most moot in view of the new ground rejection.

As to the remarks about the superiority of CEPA to Carbopol, the examiner assumes that the amounts of both CEPA and Carbopol employed by Sweger are the optimal amounts of each of the ingredients, absent evidence to the contrary. The examiner considers the conclusion of a US patent is valid absent evidence to the contrary. Further, the starch derivatives are known to provide a cosmetic composition with excellent aesthetic properties of skin feel and appearance. Therefore, one of ordinary skill in the art would have been motivated to employ the starch derivative in cosmetic compositions, such as shampoo.

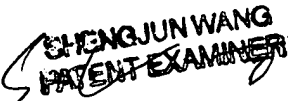
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner

SHENGJUN WANG
PATENT EXAMINER

Shengjun Wang

April 1, 2003